



Testimony for the Senate Judicial Proceedings Committee

February 2, 2023

SB 51- Reasonable Suspicion and Probable Cause - Cannabis

Favorable

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The ACLU of Maryland supports SB 51, which would prohibit police from using the odor of marijuana as a basis to stop an individual or perform a warrantless search of a vehicle.

In 2022, an overwhelming majority of voters supported the legalization of adult, recreational marijuana use. Marylanders affirmed with their vote what legislators acknowledged with the decriminalization of marijuana in 2014: **the criminalization of marijuana is a misuse of police resources and is rooted in racism.** However, legalization alone will not end the disparate enforcement of marijuana laws or unnecessary interactions with the police. In Maryland, current legal standards allow police to stop an individual or search a vehicle based on the alleged odor of marijuana alone.

Odor Stops and Searches Facilitate Fourth Amendment Violations

The Fourth Amendment grants individuals a right to be free from unreasonable searches and seizures. However, the Supreme Court has long carved out exceptions for car searches when an officer has probable cause to believe the vehicle contains contraband. Allowing the odor of marijuana to lead to searches and seizures creates a loophole in probable cause justifications as it is being applied after the fact of the stop as the reason for the stop, allowing for racial disparities in stops and arrests to continue. Research shows that police are two times more likely to search Black drivers and their vehicles during traffic stops than white drivers, even though the data shows that Black people are less likely to be found with illicit drugs and other contraband. For incidents involving Black drivers, probable cause was used to justify 67% of searches. In cases involving white drivers, probable cause was only used to justify a search in 46.1% of incidents.¹ SB 51 would

¹ <http://goccp.maryland.gov/data-dashboards/traffic-stop-data-dashboard/>

eliminate opportunities for officers to abuse the discretion afforded to them in these situations and reduce opportunities for racial profiling on the road.

Here in Maryland, post-decriminalization—the court’s decisions on these matters have been inconsistent. In 2020, the Court of Appeals ruled that the odor of marijuana alone does not provide probable cause for an arrest or warrantless search of an individual. The court’s decision was based on the idea that smell alone does not suggest criminal activity because an officer cannot determine the quantity of marijuana in someone’s possession and, therefore, does not have probable cause to believe a criminal act is taking place. But the Court of Appeals also recently ruled that, while the odor of marijuana does not provide probable cause for a warrantless search and arrest, it does provide reasonable suspicion that the person may have 10 grams or more and justifies a brief investigatory stop, which seems to defy the logic applied to their 2020 decision. That is why the legislature must step in to ensure that the state’s stance on this issue is consistent and rooted in the will of the people.

An Odor Stop and Search Ban Will Not Come at the Expense of Public Safety

SB 51 will not impede law enforcement's ability to investigate incidents of impaired driving. In the marijuana DUI context, just as with alcohol, there needs to be some evidence of impairment first before an officer conducts a search or arrest. That is why the odor of marijuana alone is insufficient to support that type of stop.

Public safety is of the utmost importance for all our communities, but diligent law enforcement can and should solve a crime using honest and evidence-based techniques without relying on pretextual bases (like the odor of marijuana) for stopping and searching people.

Marylanders should not fear police interactions because of the lingering odor of a now-legal substance and legalization must do more than just allow for the recreational use of marijuana. To be equitable, legalization must disincentivize pretextual police searches and seizures, which result in all sorts of convictions, marijuana-related or not.

For the foregoing reasons, the ACLU of Maryland urges a favorable vote on SB 51.

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